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Attachments:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Matthias Giese
Application Serial Number: 10/675,444
Filing Date: 09-30-2003
Title: Equine Arteristis Virus Vaccine
Examiner: Humphrey, Louise Wang Zhiying
Art Unit: 1648
Confirmation Number: 7837
Mail Stop: Patent Application (Response to restriction requirements)

Date: June 04, 2006

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENTS

In response to the Restriction Requirements mailed May 09, 2006, Applicant provisionally elects, with traverse, the invention of Group I (Claims 1-14, 24, and 25) directed to a vaccine composition. Reconsideration and withdrawal of the Restriction Requirement, in view of the remarks herein, is respectfully requested.

The Restriction Requirement is traversed on the basis that the inventions of Group I, Group II and Group III are closely related and require many of the same elements. Specifically, the nucleic acids required for the vaccine composition of Group I are the same as in the nucleic

acid vectors of Group II. Please compare claims 1 and 3 of the elected invention with claim 15 of Group II. Thus, a search of the components of Group I will necessarily require the search of the nucleic acid molecules of Group II. In this situation, there is no particular burden on the USPTO to include the two groups of claims in a single application. Also, Applicant would urge that the vectors are only eukaryotic expression vectors which are only able to express the peptides or antigens in the target animal, namely in an eukaryotic system.

Similarly, the claims of Group III are merely the use of the compositions of Groups I and II. The search of the invention of Group III with the other two groups of claims should not place an unreasonable burden on the Examiner. The Examiner has urged that the methods of use can be practiced with protein antigens or antibodies. However, the method claims do not encompass or require the use of such substances. Specifically, the method of treatment of claim 23, specifically requires the use of the vaccine composition of Claim 1 or alternatively the nucleic acids of claim 15. The method can not be practiced, as presently claimed without the use of one or the other of these materials.

Applicant would urge that in order to support restriction between claims in an application, the invention of those claims must be shown to be independent or distinct from each other and that the examination of all of the claims in a single application would constitute a serious burden on the Office. (See MPEP sections 803 and 808). In the instant case, a proper search of the invention of Group I would necessarily include and require a search in those areas indicated by the Examiner as appropriate for the other two Groups.

Thus, the restriction requirement is properly traversed. Accordingly, reconsideration and withdrawal of the restriction requirement is respectfully requested.

Applicant respectfully requests favorable consideration of the present application and a timely examination of all of the pending claims.

Should any official at the United States Patent and Trademark Office deem that any further action by the Applicant or Applicant's undersigned representative is desirable and/or necessary, the official is invited to telephone the undersigned at the number set forth below.

The Commissioner is herby authorized to charge any fees which may be required regarding this application under 37 CFR §§ 1.16-1.17 or credit any overpayment, to deposit account No. 503321. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, or otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 503321.

Respectfully submitted,

By: Sam Zaghmout

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